

Mackinac Straits Corridor Authority (MSCA)

Public Meeting

October 12, 2022 – 10:00 am

In-Person/Virtual Meeting ([Mackinac Straits Corridor Authority Meeting 06-07-2022 - YouTube](#))

Meeting Minutes - Draft

Members Present: Michael Nystrom, MSCA
Anthony England, MSCA
Paul Novak, MSCA

Members Absent: None

Also Present: Raymond Howd, Special Assistant Attorney General to MSCA
Dr. Mike Mooney, Consultant to MSCA
Dan Cooper, HT Engineering, Consultant to MSCA
Monica Monsma, MDOT
Bill Phillips, MDOT
Cory Petee, MDOT
Randy Debler, MDOT
Ryan Mitchell, MDOT
Cindy Robinson, MDOT
Carrie Bates, MDOT

I. Welcome/Call to Order

Mackinac Straits Corridor Authority (MSCA) Chairman Michael Nystrom opened the meeting at 10:00 a.m. and welcomed attendees, guests, and Authority members Anthony England and Paul Novak. Chairman Nystrom outlined the meeting agenda and public comment function, stating that individuals must sign-up for public comment, and then those individuals will be announced in order for public comment presentations. A public comment form was made available for use of written comments. All comments will be part of the public record of this meeting.

II. Approval of Agenda

Chairman Nystrom called for a Motion to Approve the Agenda. Motion by Paul Novak. Seconded by Anthony England. 3 ayes, 0 nays. Motion carried.

III. Approval of June 7, 2022, Minutes

Chairman Nystrom called for a Motion to Approve the June 7, 2022, Meeting Minutes. Motion by Paul Novak to accept the minutes and place on file. Seconded by Anthony England. 3 ayes, 0 nays. Motion carried.

IV. Old Business

1. Third-Party Utilities: Peninsula Fiber Network – Raymond Howd, Assistant Attorney General to MSCA

Raymond Howd noted staff has continued to negotiate with Peninsula Fiber Network (PFN) for fiber optic space within the tunnel and are very close to an agreement; however, there is one issue that is still being investigated. PFN is investing a substantial amount to install the cable within the tunnel and would like to recoup their investment before any other fiber optics lines are installed in the tunnel during construction. Currently there are no other parties who have expressed interest in placing fiber optic lines with the tunnel. PFN is requesting a clause in the draft Agreement that the Authority not grant any other third-party utilities the right to install fiber optic cable within the tunnel, until PFN had no more available capacity. Mr. Howd has met with the High-Speed Internet Office and has been in contact with the Mackinac Bridge Authority. Mr. Howd intends to invite members of the High-Speed Internet Office to give a presentation to the Authority on the fiber optic industry in general to assist it in determining whether the requested PFN clause should remain in the agreement. The current language in the draft agreement would require PFN to lease to any and all entities on a non-discriminatory basis. Member Novak indicated that in his view, the agreement should require that PFN lease capacity to fiber optic competitors on terms that are "fair, reasonable and nondiscriminatory. Chairman Nystrom commented that it is encouraging to see PFN take steps now on this issue since a secondary goal of the tunnel is to provide greater access to high-speed internet, particularly to individuals and businesses in Michigan's Upper Peninsula.

V. New Business

1. Updates to Project Specifications – Dr. Mike Mooney, Consultant to MSCA
Dr. Mooney stated Enbridge has requested three revisions to the Project Specifications and has included in the agenda packet his letter report and a memo from ARUP, the designer of record. The memo provides the redlined specification changes for each revision. The jointly developed project specifications are the nine sections of the project specifications that govern the technical requirements of the tunnel/infrastructure, as well as the construction specifications so the tunnel is constructed in accordance with the design and standard practice while the jointly developed specifications address the tunnel lining, the south shore portal and the shaft on the north shores. The jointly developed specifications do not govern the pipeline or mechanical and electrical infrastructure constructed within the tunnel. The requested revisions include:
 - A) Addition of Type IL Cement
 - B) Allowance of Truck Mixed Concrete for use in Cast-in-Place Concrete Structures
 - C) Update to List of Crude Blends for Gasket Exposure.

The MSCA Joint Specifications team have been briefed by ARUP and Enbridge, and concur that these revisions are acceptable. Dr. Mooney explained the rationale for each change and referred members to his letter report.

Authority members inquired if there were any consequences to the changes that would specifically affect the durability of the tunnel. Dr. Mooney explained that the 99-year design service life and durability requirement remains the same in the joint specifications, and that ARUP adjusted some specified parameters such as fly-ash content, limestone content, and thermal control temperature to ensure type IL meets

the design service life requirements. ARUP and Enbridge have indicated there would not be an adverse effect on the durability, quality, or service life because of the change to the cement being used for construction. Authority members asked if the environmental permitting effort Enbridge has undertaken as part of this process for preparing for construction would need to be amended or supplemented to include the proposed revisions to the changes in compounds. Mr. Howd indicated it is MDOT's understanding that would be an operational issue and not a construction issue, but MDOT will follow up on this for clarity. Board members asked if blends are modified during operations would this have any impact on the materials being used for construction? Dr. Mooney suggested that as the Authority accepts ownership of the tunnel and then creates a lease agreement, the lease agreement should include a provision for modifications or deviations in products (such as types of liquids being transported), that there should be language in the lease agreement requiring that any different products are tested for chemical degradation of the gasket material. Mr. Mitchell stated that just as the tunnel execution plan governs how the changes to the specifications can be made during the construction, the operations and maintenance plan to the tunnel operations would govern how those type of changes would or would not be allowed, and how they would be represented to the MSCA. In the case of construction, it is through the terms of the tunnel agreement and any changes to the construction execution plan would be concurred with by the MSCA. A similar approach would be kind of codified.

Chairman Nystrom called for a Motion to concur with the three requested revisions to the Project Specifications. Motion by Paul Novak to accept the requested changes. Seconded by Anthony England. 3 ayes, 0 nays. Motion carried.

2. Project Specification Material Change Approval Procedure – Raymond Howd, Special Assistant Attorney General to MSCA
Raymond Howd noted at the June 7, 2022, meeting the Authority moved to approve the concept of moving forward to develop a Memorandum of Understanding (MOU) with Enbridge that would better define what is meant by a "material change" and would also create a writing of what the respective duties and obligations are of the parties during the process of the construction execution plan has been finalized. We are at the beginning stages of developing concepts and drafting the MOU.
3. Status of MPSC Contested Case Proceedings - Raymond Howd, Special Assistant Attorney General
Raymond Howd stated on July 7, 2022, the Public Service Commission (MPSC) issued a lengthy order that remanded the administrative proceedings back to the ALJ to develop a more complete record in several areas. The first part of the order discussed the Commission's request for additional information as to what why the replacement project would be better designed and routed in a matter that alleviates the complication of maintaining the current dual pipelines. The second part was whether the project meets or exceeds current safety and engineering standards. This is one of the elements the Commission must find to grant Enbridge's permit. The Commission has requested additional information, including the feasibility of exceeding OSHA standards in designing the electrical equipment in the tunnel, information on the concrete tunnel lining's ability to withstand high-pressure air

impact in the event of an explosion, procedures for replacement of a precast tunnel lining and what that process would entail if severe cracking or acute damage from a fire explosion occurred, how the replacement might affect the Line 5 pipe segment, and a comprehensive explanation of Enbridge's leak detection system and shutdown procedures in the event there was a release of product. The Commission listed 10 items in total that they would like additional information on. Enbridge is required to file its written testimony on remand by October 21, 2022, and then PSC staff and the interveners, including MSCA may file additional testimony by January 20, 2023. Any rebuttal testimony is due by March 3, 2023, and cross-examination on all of the filed testimony would occur either in-person or virtually during the week of April 4-7, 2023.

Member Novak inquired about the identity of the party making the submissions for the Authority before the MPSC. Currently the Authority has not met to discuss the proceedings as it relates to the positions that were taken or the materials that have been submitted in the MPSC proceedings. Mr. Novak suggests the MSCA filings should be made as "The Authority Staff" not the Authority itself. This distinction will preserve the MSCA's ability to agree/disagree with what has been filed. Raymond Howd explained that the MSCA intervened as a party to the MPSC proceedings. Due to the limited number of yearly public MSCA meetings, there may not be enough time to convene a meeting to discuss what pleadings should be filed, given the uncertain nature of litigation. If a special meeting were called for this purpose, it would need to be in closed session, since it would involve litigation strategy and legal issues. Mr. Howd noted it would be better to establish a process for the Authority to discuss future filings before the filing deadline, rather than file under the name of a fictitious party – MSCA Staff.

Chairman Nystrom called for a motion to implement a flexible procedural process on official positions being taken by the Mackinac Straits Corridor Authority on legal filings, i.e., on substantive filings submitted to the MPSC, Authority Members should first convene to provide approval of the filing prior to its submission. Motion by Paul Novak, seconded by Anthony England. 3 ayes, 0 nays. Motion carried.

4. Contractor Selection Status Update – Ryan Mitchell

Mr. Mitchell gave a brief update on the contractor selection process, noting in March of 2022 Enbridge issued the Request for Proposal (RFP) for the selection of a construction contractor to build the tunnel. Since then, technical review meetings, including site visits with all proponents have been completed. Proposals from contractors are anticipated later this year. If Enbridge is satisfied with a proponent, then they will enter into a contract. MSCA Members inquired whether the instability of the economic markets and the cost escalations influenced the number of proponents for the project. Mr. Mitchell noted that every contractor has a different risk tolerance level and approach to how a specific project is delivered. The market may/not have influenced the decisions to pursue this project. MDOT has not been involved in any discussions with contractors. With the construction still being several years out it is likely there will be different market conditions. Any contractor selected will be bound by the Tunnel Agreement requirements.

5. NEPA Status Update – Ryan Mitchell

Mr. Mitchell noted the U.S. Army Corps of Engineers intent to prepare the Environmental Impact Statement (EIS) occurred in August 2022. Since then, the EIS process has continued to move forward with the public comment period for project scoping is currently underway, including online opportunities for comment. Enbridge has continued to participate in the EIS process with the third-party contractor and is responding to data requests from the Army Corps to move work forward by supporting the permit review process. Currently there is no official timeline for conclusion of the EIS process; however, in general it is approximately a two-year timeframe which was initiated in August.

6. Authority Member Novak Disclosure Letter – MSCA Board Member Paul Novak In the interest of transparency, provided the MSCA Board Members with a disclosure letter outlining a potential conflict of interest he might have from he and his firm representing multiple local governments in Michigan in litigation concerning the national opioid epidemic. Some of these clients and/or individuals within the local governments have taken positions with respect to Line 5. Raymond Howd, Special Assistant Attorney General noted Authority members under Public Act 359 are subject to two Public Acts – 1968 Public Act 317 and 1968 Public Act 318. Public Act 317 provides that a public servant shall not be a party directly or indirectly to any contract between himself and the public entity of which he is an officer. That is not the situation here where there is no potential financial gain by Mr. Novak as a Board member. Public Act 318 prohibits a state officer from being interested directly or indirectly in any contract with the State. This deals more with the idea that Mr. Novak as an Authority member could not use his position to enter a contract for his own personal gain. There is no nexus between Mr. Novak 's representing the counties listed in his disclosure letter in an opioid lawsuit, and Mr. Novak's duties as a Board member. In Mr. Howd's view, there is no conflict under Public Acts 317 or 318.

Other Business

New Contracts with Professional Consultants – Chairman Mike Nystrom
Chairman Nystrom noted the contracts with Dan Cooper, HT Engineering, Dr. Mike Mooney, Consultant, and Raymond Howd, Special Assistant Attorney General expire December 31, 2022. The next MSCA board meeting is not scheduled until February 2023. There is a lapse of time where these consultants are providing services for the MSCA without a contract. This same situation occurred in 2021 where the Authority had to retroactively approve all three contracts. Chairman Nystrom suggested the MSCA board extend each contract, unless there are significant changes, at the current contract level, including inflationary increases that are proposed for Dan Cooper and Dr. Mike Mooney. Ryan Mitchell noted both the contracts for HT Engineering and Dr. Mooney have been extended through the end of 2023. Raymond Howd's contract must be officially approved by the Attorney General's office. The MSCA board would like Mr. Howd to continue as the Special Assistant Attorney General representing the Authority. Unless the MSCA approved his contract before next February's public meeting, Mr. Howd would continue representing the Authority for a month and a half without an official contract. . Contracts through the State Attorney General's office have an intentionally limited budget and are limited to one year in length. To avoid a gap in services, the Authority can extend Mr. Howd's contract. The budget has a current cap of \$75K. It

was suggested to similarly increase the budget as in past years by an additional \$50K and bring the cap to \$125K. The rate was \$125 and could include an inflationary adjustment to \$150, all subject to approval by the Attorney General's office. By law the only State dollars that can be used are the Straits Protection Fund dollars which are used to compensate State staff and consultants involved in the tunnel project. MDOT is a custodian for this fund, but the Attorney General's office holds the contract.

Anthony England made a motion to support the concept of continued legal representation of Mr. Raymond Howd for the MSCA through the Attorney General's office based on the provisions approved by the Attorney General's office. Provided that the Attorney General's office has approved it, Chairman Nystrom will have the authority to sign the contract and report on it at the next MSCA board meeting. Seconded by Paul Novak. 3 ayes, 0 nays. Motion carried.

VI. Public Comment

The public is encouraged to address Authority members at this time. Each member of the public is limited to three (3) minutes. Written public comment to the MSCA may be submitted via the [MSCA Public Comment Form](#).

Monica Monsma, MDOT, coordinated the public comments that were heard. Public comments are not question and answer periods for Authority members and there will not be a response provided from Authority members; however public comments will be taken under advisement for consideration. Two individuals signed up to give public comment; however only one presented. A full list is attached to these minutes, in order of presentations. Submitted comments will be included on the public website for viewing.

VII. Adjourn

With no further business at hand, Chairman Nystrom called for Motion to Adjourn. Motion by Paul Novak. Seconded by Anthony England. All in favor. Motion Carried.

Meeting adjourned at 11:15 a.m.

Minutes taken by:
Cindy Robinson
Senior Executive Management Assistant
MDOT Bureau of Development

Approved: _____